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2017 IL App (3d) 170263-U

Order filed August 4, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

<i>In re R.C.</i> ,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0263
	)	Circuit No. 15-JA-78
v.	)	
	)	
Christopher P.,	)	Honorable
	)	Katherine Gorman Hubler
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 Respondent, Christopher P., appeals from the trial court's orders finding him unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to his daughter's welfare and terminating his parental rights. On appeal, he argues that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 On March 25, 2015, the State filed a petition for adjudication of wardship of R.C. (born January 17, 2012), alleging that she was neglected pursuant to section 2-3 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2014)), in that her environment was injurious to her welfare. The petition alleged that on February 28, 2015, R.C.’s mother dropped her off at her great grandmother’s house and refused to return to pick her up as of March 23, 2015. The petition further alleged that the mother declined to give the Department of Children and Family Services (DCFS) the full name of R.C.’s father. However, she did provide his first name and date of birth, which DCFS used to identify respondent as R.C.’s putative father. According to the petition, the mother and respondent had been involved in several incidents of domestic violence. The petition alleged that respondent was found unfit in a prior juvenile case due to physical abuse of his 3-month-old child and that his parental rights had been terminated. It also provided a list of respondent’s prior offenses, including aggravated domestic battery in 2006, driving under the influence in 2010, disorderly conduct in 2012, and possession of cannabis in 2014.

¶ 5 The court adjudicated R.C. abused and neglected as a result of her injurious environment and scheduled the matter for a dispositional hearing. At the dispositional hearing, the court found that it was in the best interest of R.C. that she be made a ward of the court and that the mother was unfit. The trial court then granted guardianship to DCFS, with the right to place the minor in appropriate custody.

¶ 6 In the dispositional order, the mother was instructed to cooperate fully with DCFS and other agencies, perform random drug drops, participate in parenting classes, complete domestic violence treatment, obtain stable housing, and provide updated information to all social services. The order further stated that respondent, as the putative father, was prohibited from having any

contact with the minor as long as his status remained putative. Respondent was directed to establish paternity. If he established paternity, respondent was then ordered to cooperate with DCFS by signing all necessary releases and providing his social history information. The court set the permanency goal as return home within 12 months. The dispositional order was dated August 31, 2015.

¶ 7 On July 27, 2016, the State filed a petition to terminate respondent's parental rights, alleging that respondent was an unfit parent in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to R.C.'s welfare (750 ILCS 50/1(D)(b) (West 2016)). The court conducted a permanency review hearing on August 15, 2016, to review the mother's efforts and progress. At that hearing, the State and the guardian *ad litem* (GAL) argued that respondent also failed to make reasonable efforts based on his criminal record and his lack of engagement with the Center for Youth and Family Solutions, the agency assigned to the family's case. The court held that until respondent had been declared the legal father, an "efforts" finding was not appropriate and that his efforts should be measured from the moment he was declared R.C.'s legal father. The court declined to make a fitness finding regarding respondent because he was still the putative father at the time the dispositional order was entered and had only been the legal father for approximately 30 days.

¶ 8 An adjudicatory hearing on the petition to terminate was held on February 6, 2017. At the hearing, the trial court reviewed the pleadings and orders in the case file, as well as the mother's counseling records, respondent's criminal history, and other exhibits in support of the petition. The State's exhibits included respondent's prior neglect case in 2006, in which he was found unfit regarding another child. Respondent surrendered his parental rights to that child in September 2007. The court also took judicial notice that respondent had been convicted of aggravated robbery in July 2016 and was sentenced to 12 years in the Department of Corrections.

¶ 9 Carry Roller testified that she worked as an integrated assessment screener for Northern Illinois University. Roller interviewed the mother on April 21, 2015, and the mother informed her that respondent had been in contact with the child. Roller testified that the child was in protective custody at that time and that a parent usually cannot have contact with the child unless it is supervised. Roller interviewed the mother again on August 2, 2016, and the mother stated that respondent had been living with her for several months. Another social worker interviewed the mother in July 2016. The mother also told her that she and respondent were living together after the dispositional order was entered in August 2015.

¶ 10 Roller stated that she interviewed respondent in July 2016 prior to his arrest and respondent admitted that he had been living with the mother and that he had been spending time with R.C. even though he knew a DCFS case had been initiated involving R.C. Roller testified that the agency's file indicated that caseworkers had made several phone calls to respondent at numerous contact numbers and sent certified letters to him to schedule an interview with no response.

¶ 11 Lauren Grunwald testified that she had been the caseworker for the family since February 2016. When Grunwald was assigned to the case, R.C.'s mother told her that she was not living with respondent. However, she later discovered that the mother lied to her.

¶ 12 Grunwald also interviewed respondent. She met with respondent in the Peoria County jail on July 25, 2016. She spoke with respondent about R.C., and respondent signed a voluntary acknowledgment of paternity (VAP) form indicating that he was her legal father. She stated that he was reluctant to sign the form because it stated that by acknowledging paternity he was responsible for paying child support. Respondent informed Grunwald that he was not going to pay child support and that R.C.'s mother was not going to make him pay. During the interview, respondent also revealed that he was living with R.C.'s mother but that he had reported a

different address on the VAP form because he thought it would affect the mother's termination case.

¶ 13 Respondent testified that he signed a voluntary acknowledgment of paternity form for R.C. and another child when he met with Grunwald. He also admitted that he had been incarcerated since July 19, 2016. Respondent testified that he did not recall being personally served with any papers in this case, other than the termination petition in 2015. He also stated that he was not aware of any orders prohibiting him from having contact with R.C. Respondent indicated that prior to his incarceration his visits with R.C. went well. They talked and laughed and worked on numbers and the alphabet. He also took her to Chuck E. Cheese and the park.

¶ 14 On cross-examination by the State, respondent admitted that he frequently used his mother's address for mailing purposes but denied that she always delivered the mail to him. Respondent admitted that he remained in contact with R.C.'s mother throughout the case and knew that she was going to court to retain custody of R.C. He knew that she had to complete services. However, he was aware that she had been found unfit and could only have supervised visits with R.C.

¶ 15 On cross-examination by the GAL, respondent stated that he had supported R.C. financially and emotionally since she was born. He stated that he gave her toys and clothes whenever possible and that he provided money for R.C.'s needs when the mother requested it. He admitted that he did not know the name of R.C.'s doctor, but he knew the name of the preschool she attended. Respondent testified that while he was incarcerated he had participated in substance abuse groups and life skills classes. He also testified that he completed a parenting class as required in his integrated assessment. In support of his progress, respondent submitted certificates and a letter from his corrections instructor stated that he had passed several tests for the GED program.

¶ 16 The trial court found, by clear and convincing evidence, that respondent was an unfit parent in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to R.C.'s welfare on a consistent basis. The court noted that respondent drifted in and out of R.C.'s life as it suited him and refused to take financial responsibility for her well-being. It granted the State's petition and set the matter for a best-interest determination.

¶ 17 At the best interest hearing, on March 20, 2017, the court reviewed the best interest report and addendum prepared by Grunwald. The report stated that R.C. currently resides with her foster parent, her maternal grandmother, and has lived with her since she was removed from her mother's care in March 2015. R.C.'s grandmother has custody of R.C. and R.C.'s biological half-sister. The report indicated that R.C. is a happy four-year old toddler whose needs are met on a daily basis. R.C.'s grandmother provides a "very supportive, \*\*\* wonderful home" with an abundance of resources. Grunwald noted that R.C.'s basic needs of food, shelter, clothing, health and education are consistently satisfied. She also reported that R.C. has bonded with her grandmother and has a close emotional connection with her half-sibling. Grunwald believed that it was in the best interest of R.C. to have a permanent home with her grandmother and requested that the court terminate respondent's parental rights.

¶ 18 Respondent testified that he had frequent contact with R.C. before the juvenile case was initiated in 2015. He attended checkups, changed diapers, and watched R.C. while the mother was out of the house. Respondent acknowledged that after he was arrested and placed in jail, his visits with R.C. were minimal. However, when he had the opportunity to see R.C., the visits were emotional and warm. Respondent testified that R.C.'s face "lit up" when she saw him and she would call him "Daddy." He believed that R.C. had a strong emotional attachment to him and that he had a strong emotional attachment to her. Respondent further testified that he hoped

to begin services while he was incarcerated and that, upon release from prison, he planned to complete any services that were ordered.

¶ 19 The trial court found that it was in R.C.'s best interest to terminate respondent's parental rights. The court stated that, although respondent loved R.C., he had not acted responsibly when it came to her primary needs and daily care. Based on the need for certainty and stability, the trial court changed the goal to adoption and entered an order terminating respondent's parental rights.

¶ 20 ANALYSIS

¶ 21 I. Fitness Finding

¶ 22 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident from a review of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). The trial court's decision is afforded great deference because it has the best opportunity to observe the witnesses and evaluate their credibility. *Jordan V.*, 347 Ill. App. 3d at 1067.

¶ 23 Under section 1(D)(b) of the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)), a parent may be found unfit due to a failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2016). In determining whether a parent showed reasonable concern, interest or responsibility, we have to examine the parent's conduct in the context of the circumstances in which it occurred. *In re Adoption of Syck*, 138 Ill. 2d 255, 278 (1990). Circumstances that should be considered include a parent's failure to personally visit the child and a parent's failure to otherwise attempt to communicate with the child. *Id.* at 279-80. If physical contact and personal visits are impractical, letters or

telephone calls may demonstrate a reasonable degree of concern, interest or responsibility. *Id.* Our supreme court has also indicated that a parent's failure to comply with the directives of a service plan is equivalent to a parent's failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. See *In re D.L.*, 191 Ill. 2d 1, 11-12 (2000). There is no temporal limitation when considering parental unfitness under this provision. See 750 ILCS 50/1(D)(b) (West 2016); *In re M.J.*, 314 Ill. App. 3d 649, 656 (2000).

¶ 24 Here, the trial court found respondent unfit as to R.C. because he failed to maintain a reasonable degree of interest, concern or responsibility as to her welfare. The record reveals that respondent was aware that he was the father of the child, but he did not appear in court until he was arrested and incarcerated 15 months later. He knew that the mother was attending hearings and performing services beginning in April 2015. However, he did not acknowledge paternity until he was asked to sign a voluntary acknowledgment of paternity in July 2016. And even though he signed the form, he stated that he would not pay child support to the mother to provide for R.C.'s food, clothing, and healthcare needs. Moreover, respondent committed a violent felony during the pendency of this case that limited his ability to visit R.C. or cultivate a parental relationship with her.

¶ 25 Respondent's reliance on his own testimony to show that he exhibited a reasonable degree of interest, concern, or responsibility is unavailing. He contends that the trial court failed to consider that he visited his daughter regularly before he was arrested, took her to the park, and bought her toys. However, respondent admitted that after his conviction, he and R.C. rarely spent time together. Under these circumstances, we cannot say that an opposite conclusion was clearly evident. See *Jordan V.*, 347 Ill. App. 3d at 1067 (as a reviewing court, we are not in a better position to weigh the evidence or assess the witnesses' credibility). Thus, the trial court's



finding that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of R.C. was not against the manifest weight of the evidence.

¶ 26

## II. Best Interest Finding

¶ 27

Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62.

¶ 28

The focus of the best interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2016). The parent's interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Courts should not allow a child to live indefinitely with the lack of permanence inherent in a foster home. *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991).

¶ 29

The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments \* \* \* [;]

\* \* \*

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05)

(West 2016).

¶ 30 Here, the record demonstrates R.C. had been with her foster family since March 2015, and she had developed a close bond with foster mother and her half-sibling. R.C. was originally placed with her maternal grandmother when she was two years old, and she had lived with her for the past 23 months of her life. R.C. and her grandmother had formed a strong bond, and R.C. was happy and well-adjusted in her foster home. Moreover, the best-interest report stated that R.C.’s grandmother was willing to provide R.C. permanency by adopting her if she was unable to return home to respondent.

¶ 31 The record further demonstrates that respondent cannot provide stability and permanence for R.C. in the near future. Although respondent loves his daughter, he is currently incarcerated and will not be released from prison until July 19, 2022. See *People v. Goods*, 2016 IL App (1st) 140511, ¶ 56 (court may take judicial notice of information provided by the Illinois Department of Corrections). R.C. should not have to languish in foster care until respondent is released from prison and completes all of the services to establish that he is a fit parent. The trial court's conclusion that it was in R.C.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 32

## CONCLUSION

¶ 33 The judgment of the circuit court of Peoria County is affirmed.

¶ 34 Affirmed.